

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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**IN RE ELECTRONIC BOOKS ANTITRUST LITIGATION** ) 11-md-02293 (DLC)  
   ) ECF Case

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**This Document Relates to:**

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**THE STATE OF TEXAS; et al.,** )  
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   )  
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   )  
   )  
   )  
**Plaintiffs,** )  
   ) Civil Action No. 12-cv-03394 (DLC)  
   )  
**PENGUIN GROUP (USA) INC.;** )  
**HOLTZBRINCK PUBLISHERS, LLC** )  
   )  
   )  
   )  
**d/b/a MACMILLAN; and** )  
   )  
**APPLE INC.:** )  
   )  
   )  
   )  
   )  
   )  
**Defendants.** )  
   )

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**MEMORANDUM IN SUPPORT OF JOINT MOTION TO DISMISS WITHOUT  
PREJUDICE SIMON & SCHUSTER, INC. AND SIMON & SCHUSTER DIGITAL  
SALES, INC.**

The States of Texas, Connecticut, Alaska, Arizona, Colorado, Illinois, Iowa, Maryland, Missouri, Ohio, South Dakota, Tennessee, Vermont, and West Virginia and the Commonwealths of Pennsylvania and Puerto Rico (the “Plaintiff States”), by and through their Attorneys General, and Simon & Schuster, Inc. and Simon & Schuster Digital Sales, Inc. file this memorandum in support of their joint motion to dismiss without prejudice Simon & Schuster, Inc. and Simon & Schuster Digital Sales, Inc. (collectively, “Simon & Schuster”) as defendants in *State of Texas v. Penguin Group (USA), Inc.*, Civil Action No. 12-cv-03394 (DLC).

## **FACTS**

On April 11, 2012, Plaintiff States filed suit in the United States District Court for the Western District of Texas against Simon & Schuster and three other Defendants, alleging violations of federal and state antitrust laws. On April 30, 2012, this action was transferred to this Court and consolidated with other e-books litigation in the present MDL.

On May 10, 2012, Simon & Schuster signed a Memorandum of Understanding (“MOU”) with the Plaintiff States. Plaintiff States and Simon and Schuster intend to enter into a settlement agreement, and Plaintiff States will subsequently file with the Court a proposed notice and distribution plan, as required by section 4c(b) of the Clayton Act, 15 U.S.C. §15c(b).

## **ARGUMENT**

15 U.S.C. § 15c(c) provides that an action under section 4c “shall not be dismissed or compromised without the approval of the court.” The Plaintiff States and Simon & Schuster are in agreement that dismissal of Simon & Schuster from this action without prejudice will facilitate the approval process under Section 4c. Dismissal without prejudice is required to ensure that Simon & Schuster can be named as a defendant in a new settlement complaint, which will be filed as appropriate in the course of the Section 4c process.

**CONCLUSION**

For the reasons set forth above, the joint motion should be granted.

Respectfully submitted,

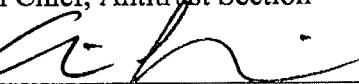
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